

**4-504. Subpoena.**

*[For use with Rule 3-501.1 NMRA in the Metropolitan Court]*

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_  
\_\_\_\_\_ COURT

\_\_\_\_\_, Plaintiff

v.

No. \_\_\_\_\_

\_\_\_\_\_, Defendant

**SUBPOENA<sup>1</sup>**

**SUBPOENA FOR APPEARANCE OF PERSON FOR A STATEMENT:**

TO: \_\_\_\_\_

YOU ARE HEREBY COMMANDED TO APPEAR as follows:

Place: \_\_\_\_\_

Date: \_\_\_\_\_, \_\_\_\_\_. Time: \_\_\_\_\_ (a.m.) (p.m.)

to give a statement in the above case.

\_\_\_\_\_  
Judge<sup>2</sup> or attorney

**RETURN FOR COMPLETION BY SHERIFF OR DEPUTY<sup>3</sup>**

I certify that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_

County, I served this subpoena on \_\_\_\_\_

by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
Deputy sheriff

**RETURN FOR COMPLETION BY OTHER PERSON  
MAKING SERVICE<sup>3</sup>**

I, being duly sworn, on oath say that I am over the age of eighteen (18) years and not a party to this lawsuit, and that on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in \_\_\_\_\_ County, I served this subpoena on \_\_\_\_\_ by delivering to the person named a copy of the subpoena, the statutory witness fee and mileage in the amount of \$\_\_\_\_\_.

\_\_\_\_\_  
Person making service

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (date).

\_\_\_\_\_  
Judge, notary or other officer  
authorized to administer oaths

THIS SUBPOENA issued by or at request of:

\_\_\_\_\_  
Name of attorney of party

Address

\_\_\_\_\_  
Telephone

**CERTIFICATE OF SERVICE BY ATTORNEY<sup>3</sup>**

I certify that I caused a copy of this subpoena to be served on the following persons or entities by (delivery) (mail) on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

(1) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

(2) \_\_\_\_\_  
(*Name of party*)

\_\_\_\_\_  
(*Address*)

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date of signature

**TO BE PRINTED ON EACH SUBPOENA**

1. If a person's attendance is commanded, one full day's per diem must be tendered with the

subpoena.

2. The judge may issue a pro se party a subpoena for a statement only if the subpoena is completed prior to issuance by the court. *See* Rules 2-502 and 3-502 NMRA.
3. A copy of the subpoena must be served on each party in the manner provided by Rule 1-005 NMRA. If service is by a party, an affidavit of service must be used instead of a certificate of service.

### **PROTECTION OF PERSONS SUBJECT TO SUBPOENAS**

A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (1) fails to allow reasonable time for compliance;
- (2) requires a person who is not a party or an officer of a party to travel outside the county in which the person resides or is employed or regularly transacts business in person, except as provided below, such a person may in order to attend a hearing or trial be commanded to travel from any place within the county in which the hearing or trial is held, or
- (3) requires disclosure of privileged or other protected matter and no exception or waiver

applies, or

- (4) subjects a person to undue burden.

If a subpoena

- (1) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (2) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (3) requires a person who is not a party or an officer of a party to incur substantial expense to travel,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

#### **DUTIES IN RESPONDING TO SUBPOENA**

- (1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.
- (2) When information subject to a subpoena is withheld on a claim that it is privileged or subject

to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

[Approved, effective May 1, 2002; as amended, effective January 20, 2005.]

**Statutory witness fee.** Section 38-6-4 NMSA 1978 provides for the payment of witness fees at the rate set forth in the Per Diem and Mileage Act for "nonsalaried public officers". Section 10-8-4 NMSA 1978 of the Per Diem and Mileage Act provides for per diem and mileage for nonsalaried public officers in the amount of \$95.00 for each meeting attended.